



LEGISLATIVE COMMITTEE MEETING

APRIL 16, 2013

LEGISLATIVE COMMITTEE MEETING AGENDA



- Chapter 7 (Special Development Regulations)
- Chapter 8 (Stormwater)
- Chapter 10 (Floodplain)
- Other Edits

CHAPTER VII

SPECIAL DEVELOPMENT REGUALTIONS



- **§7.1 – MOBILE HOME PARKS**
- **§7.2 – TELECOMMUNICATION FACILITIES**
- **§7.3 – WIND ENERGY FACILITIES**
- **§7.4 – SIGNS**
- **§7.5 – TEMPORARY USES**
- **§7.6 – IN-HOME OCCUPATIONS**
- **§7.7 – AGRICULTURAL TOURISM OPERATIONS**

§7.1 – MOBILE HOME PARKS



- **Designed to give some structure and organization to mobile home communities**
- **Adds an explicit provision for maintenance of infrastructure and structures to prevent deterioration**
- **Little else modified in the existing provisions**

§7.2 – TELECOMMUNICATIONS



- **Much of the existing Chapter XX remains the same**
- **A key change involves removing the erection of new tower structures from administrative review. No new towers should only be approved administratively.**
- **Clarifies other administrative approvals**
- **Clarifies application process and review criteria for both administrative and public hearing**

§7.3 – WIND ENERGY FACILITIES



- **New provisions to primarily address utility scale wind energy generating facilities**
- **Exempts micro, roof mounted, and agricultural facilities**
- **Provides regulations for small (SWECS) and large (LUS) facilities**
- **Provides similar process to telecom review and approval including maintenance provisions**

§7.4 – SIGNS



- **No intention at this time to create any kind of sign ordinance. Very complex, time consuming, and sensitive**
- **Only purpose is to address a directive to establish a provision to ensure billboard or other large signs could not encroach into public way**

§7.5 – TEMPORARY USES



- **New section designed to address short-term or temporary uses that should have some review but fall well below site plan review threshold**
- **Establishes minor and major permit thresholds**
 - **Minor includes temporary vendors, food carts, some events**
 - **Major includes more impacting uses such as large events and structures**
- **Minor temporary uses reviewed administratively with short time frame**
- **Several categories such as commercial fireworks sales, explosive materials storage, special amusement operations, and tents/canopies were specifically requested by the Administrator or Public Safety. These provisions were provided and reviewed.**

CHAPTER VIII

STORMWATER POLLUTION PREVENTION, GRADING, AND EROSION CONTROL



A new chapter consistent with the previously approved Benton County Court Order **C-2009-80**

WHO?

Federal Level: EPA (U.S. CLEAN WATER ACT)

State Level: ADEQ (Arkansas Water and Air Pollution Control Act)

This is a **federal** mandate managed by the **state** and implemented at the **local** level

WHY?

To protect and enhance the water quality

HOW?

National Pollution Discharge Elimination System (NPDES)

AGRICULTURAL, OIL AND GAS, AND SILVICULTURE ACTIVITIES ARE EXEMPT FROM STORMWATER PERMITTING.

CHAPTER VIII

STORMWATER POLLUTION PREVENTION, GRADING, AND EROSION CONTROL



National Pollution Discharge Elimination System- NPDES

INDIVIDUAL
NPDES
DISCHARGE
PERMIT

GENERAL NPDES
DISCHARGE PERMIT

- SW General Permits
 - Construction
 - Industrial

•**MS4**

•Non SW NPDES
General Permits

NO-
DISCHARGE
PERMIT

Wastewater
Treatment
Construction
Permit

MS4 is an acronym for Municipal Separate Storm Sewer System.

Benton County is a small MS4 under the phase II program.

A small MS4 serves a population of less than 100,000 or certain regulated areas.

CHAPTER VIII

STORMWATER POLLUTION PREVENTION, GRADING, AND EROSION CONTROL



The Court Order pertains to discharges from construction activities

- All Construction sites where construction on site will disturb soil or vegetation **one (1) acre** or more during the life of the project requires a SWPPP
- Requires a Stormwater Permit
- Requires a grading and drainage plan
- Erosion and Sediment Control guidelines- BMP's

Contractors required to view a short training show and complete a quiz and receive a certificate applicable in all NWA communities for MS4 properties good for three (3) years. This can be done online for added convenience to contractors:

<http://www.surveymonkey.com/s/HHXHT7L>



Contractors



- In order to get the word out to all area contractors, the County plans to send notifications based on list generated by the Arkansas Contractors Licensing Board
- This will allow contractors to be proactive and get this out of the way well in advance of any project deadline

CHAPTER VIII

STORMWATER POLLUTION PREVENTION, GRADING, AND EROSION CONTROL



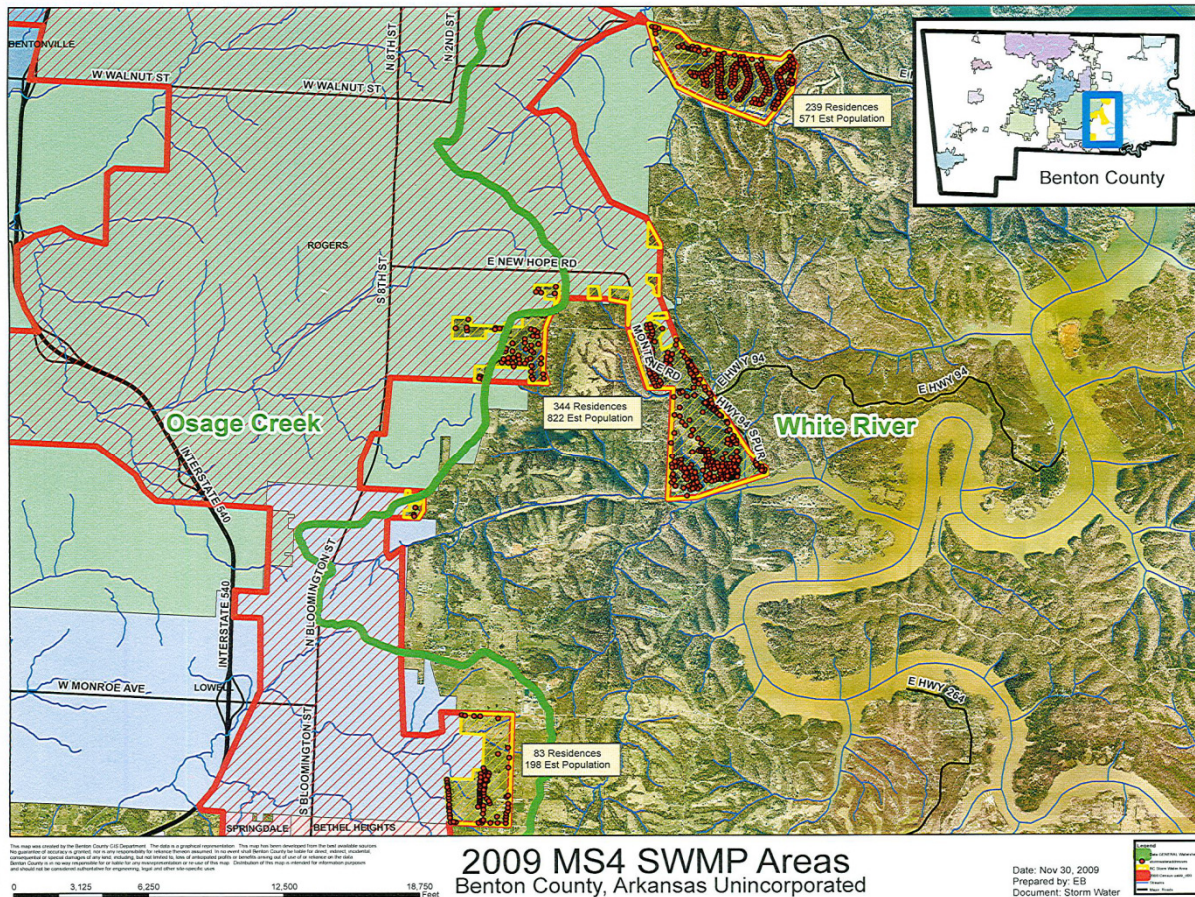
Where?

BENTON COUNTY MS4 (2000)

County Population: 62,615

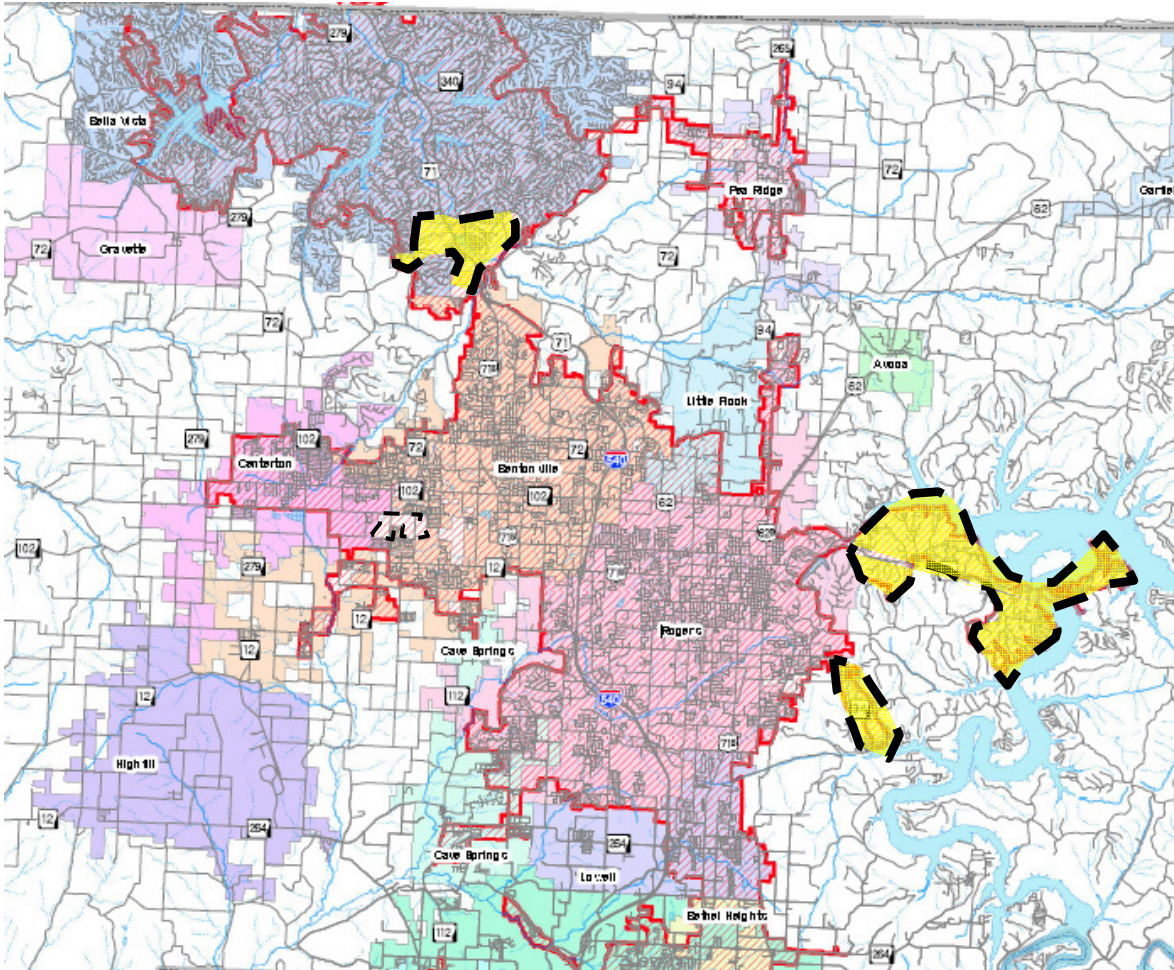
MS4 Population: 1889

MS4 Percentage: 3.0%



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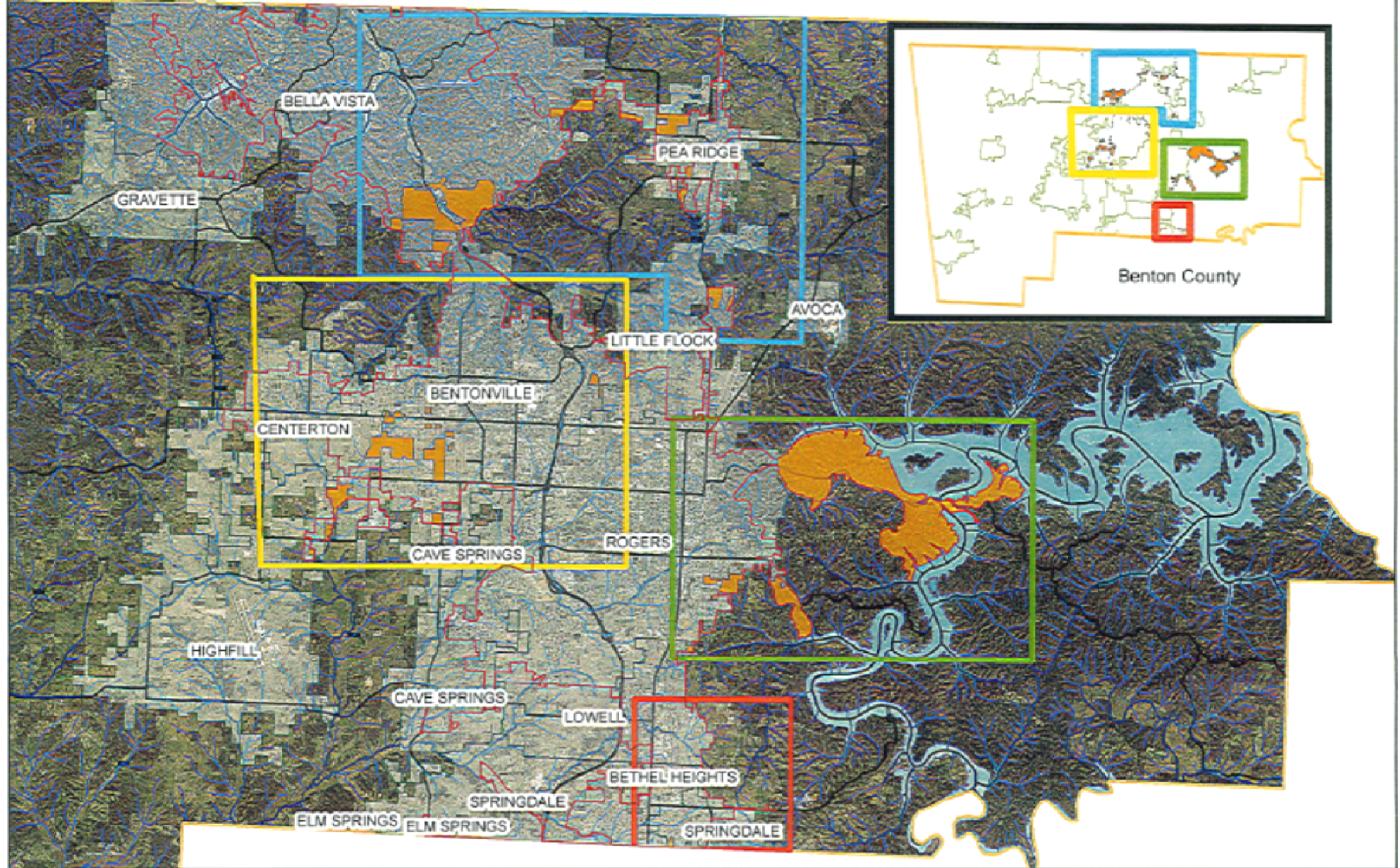
Where?

BENTON COUNTY MS4 (2010)

County Population: 50,494

MS4 Population: 5339

MS4 Percent = 10.6%



BENTON COUNTY MS4 AREAS

CHAPTER VIII

STORMWATER POLLUTION PREVENTION, GRADING, AND EROSION CONTROL



MS4 Requirements

- MINIMUM CONTROL MEASURE **#1**: PUBLIC OUTREACH AND EDUCATION
- MINIMUM CONTROL MEASURE **#2**: PUBLIC INVOLVEMENT / PARTICIPATION
- MINIMUM CONTROL MEASURE **#3**: ILLICIT DISCHARGES DETECTION AND ELIMINATION
- MINIMUM CONTROL MEASURE **#4**: CONSTRUCTION SITE STORMWATER RUNOFF CONTROL
- MINIMUM CONTROL MEASURE **#5**: POST-CONSTRUCTION STORMWATER MANAGEMENT FOR NEW DEVELOPMENT AND RE-DEVELOPMENT
- MINIMUM CONTROL MEASURE **#6**: POLLUTION PREVENTION / GOOD HOUSEKEEPING

CHAPTER VIII

STORMWATER POLLUTION PREVENTION, GRADING, AND EROSION CONTROL

What are Potential Implications of Not Participating in the MS4 Program...?

- Benton County actually tried to opt out in 2009. But ADEQ warned that such a move would have significant consequences including...
- Additional taxpayer cost to fulfill all the requirements, such as, Education, Public Outreach and Pollution Prevention and Good Housekeeping
- Significant fines would be the result of non-compliance

Consequences

- If a municipality fails to administer MS4 Permit requirements, they are in violation of their own NPDES permit and subject to Clean Water Act enforcement action. Thus the legal accountability for MS4/municipalities is multi-layered, as is the legal accountability for individuals engaged in construction activity.

CHAPTER X

FLOOD DAMAGE PROTECTION



The revised chapter is consistent with the existing Flood Damage Prevention Ordinance.

Who? Federal Level: FEMA (National Flood Insurance Act, 1968),
Flood Disaster Protection Act (1973) & others

State Level: Arkansas Natural Resources Commission (ANRC)

Why? To prevent flood damages and manage floodplain development to address public health, safety, and welfare of citizens. Policy holders get a premium reduction due to the County's participation in the program.

How? Through the National Flood Insurance Program (NFIP)

CHAPTER X

FLOOD DAMAGE PROTECTION



Where? It applies to properties in the County located in a floodplain only as identified in the FIRM (Federal Insurance Rate Map) provided by FEMA.

When? The County has been a Class **8** community in the CRS (Community Rating System) since 1998 (see next slide).

What is required?

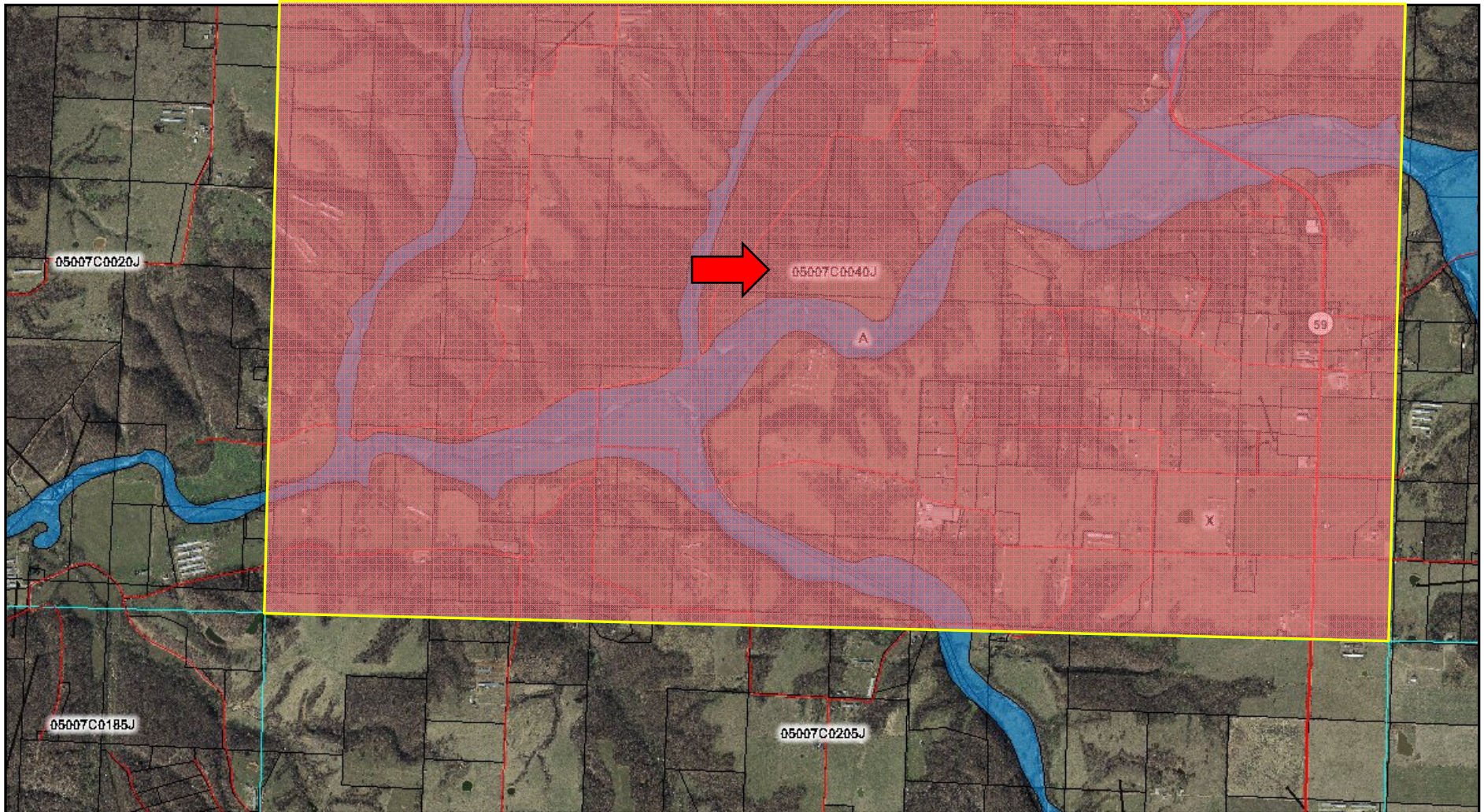
- Floodplain Development Permit
- Adherence to minimum standards for development. One (1') foot above the Base Flood Elevation (BFE).

The table below shows the credit points earned, classification awarded, and premium reductions given for communities in the NFIP CRS.

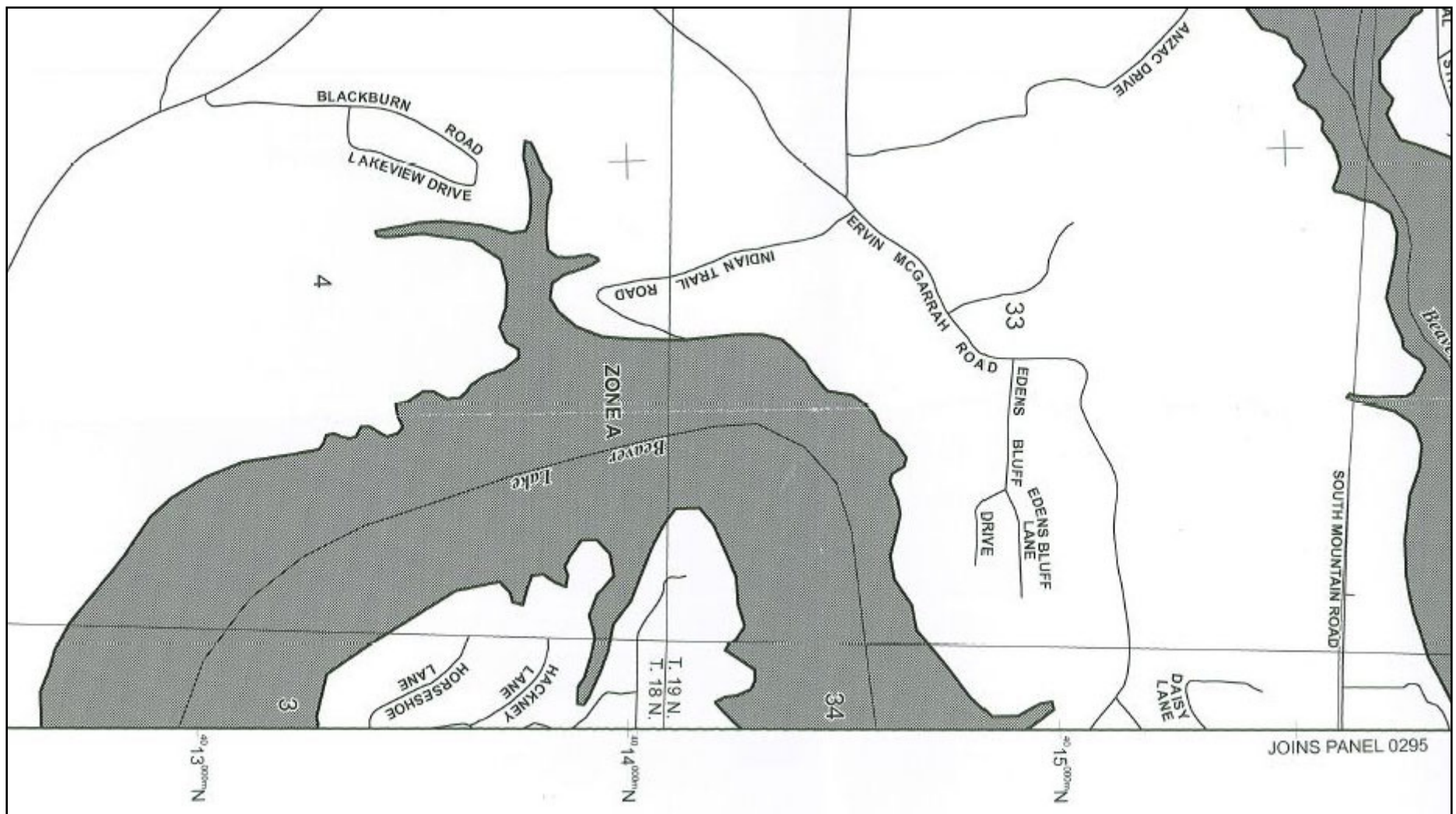
CREDIT POINTS	CLASS	PREMIUM REDUCTION SFHA*	PREMIUM REDUCTION NON-SFHA **
4,500+	1	45%	10%
4,000 – 4,499	2	40%	10%
3,500 – 3,999	3	35%	10%
3,000 – 3,499	4	30%	10%
2,500 – 2,999	5	25%	10%
2,000 – 2,499	6	20%	10%
1,500 – 1,999	7	15%	5%
1,000 – 1,499	8	10%	5%
500 – 999	9	5%	5%
0 – 499	10	0	0

*Special Flood Hazard Area

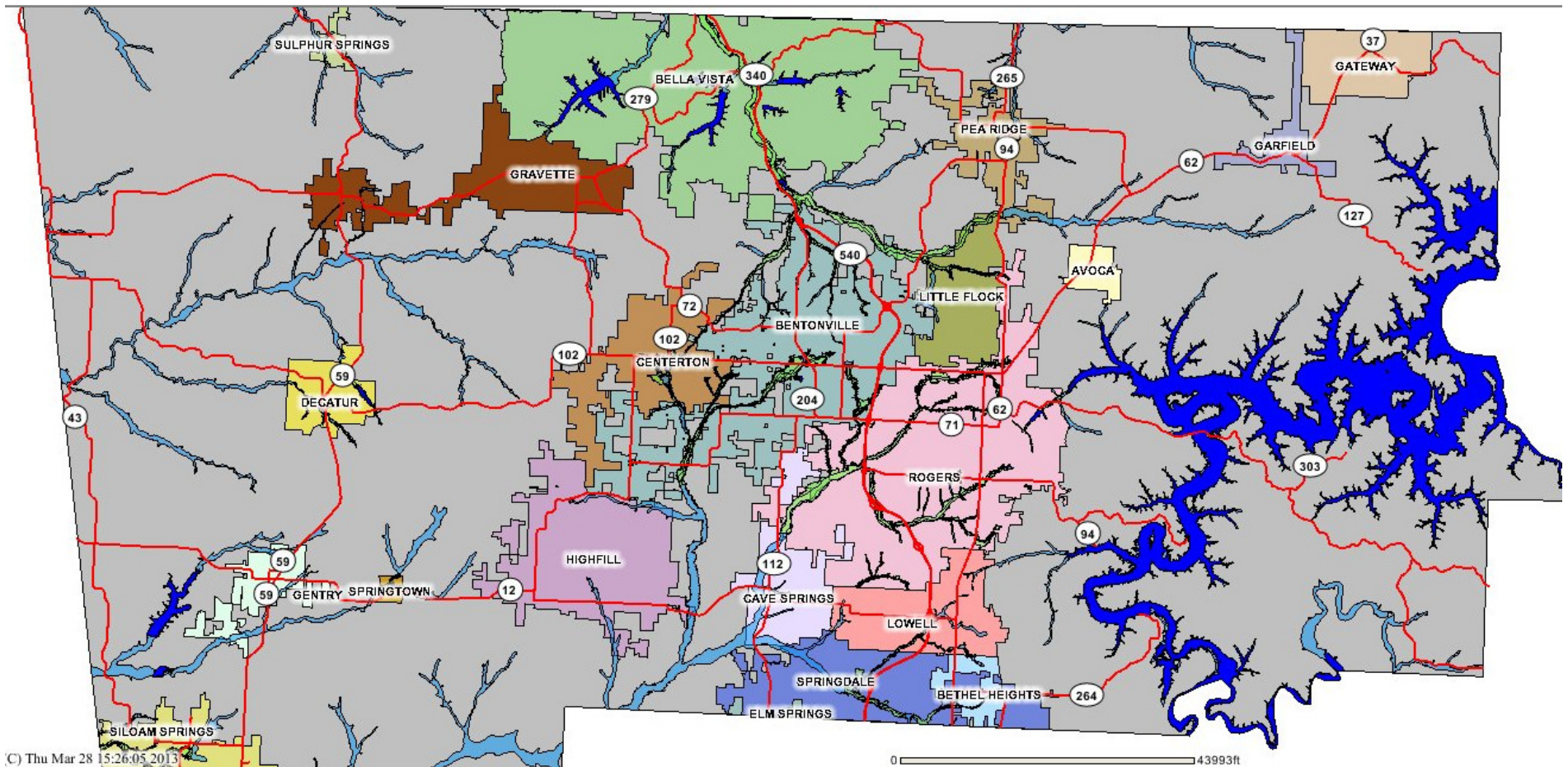
**Preferred Risk Policies are available only in B, C, and X Zones for properties that are shown to have a minimal risk of flood damage. The Preferred Risk Policy does not receive premium rate credits under the CRS because it already has a lower premium than other policies. The CRS credit for AR and A99 Zones are based on non-Special Flood Hazard Areas (non-SFHAs) (B, C, and X Zones). Credits are: classes 1-6, 10% and classes 7-9, 5%. Premium reductions are subject to change.



Snip from Benton County GIS showing 100 Year Floodplain, FIRM panels, and aerial coverage from 2012



Typical FIRM Map Panel - 2012



- Approximately 792 acres of unincorporated county land area are in a floodplain
- The County has issued floodplain development permits since program began in 1998

CHAPTER X

FLOOD DAMAGE PROTECTION



What would happen if Benton County didn't participate in the NFIP Program?

- Participation in the NFIP is voluntary for States and communities. However, once the community is part of the CRS, failure to meet the standards may result in administrative action by FEMA, loss of CRS Status, and loss of flood insurance premium rate credits.

Other Edits and Changes

- **Family Splits:** Concerns on the part of members led staff to create a set of four different options that the Committee could consider:
 - No Changes to Existing
 - Current Staff Proposal
 - Make Adjustments to Current (Hybrid)
 - Committee Direct Staff Back to Drawing Board
- **Other Questions/Comments:** Refer to the table providing explanations for addressing each point brought up by the Committee.

Family Splits

- No Change to Existing: This would retain the following provision:

“...conveyances between husband and wife for estate planning purposes or for purposes or for purposes of marital division are not governed hereunder and are specifically exempted. *Interfamily transfers from a parent to children shall be construed as a tract split. Such conveyances shall not constitute the process of subdivision.*”

Comment: The result of this option would be to limit family splits to whatever could be worked out through the existing tract split provisions. These allow only one additional parcel to be created but there is no time frame established.

Current Staff Proposal

- Use the family splits provisions as currently constituted in draft form.
- See Chapter 5 in the section on Informal Plats for the existing language.

Comment: This option still needs to be analyzed and sharpened. The goal is to develop a provision that facilitates genuine family splits but prevents the workaround that allows property owners to avoid the more substantial requirements of formal subdivisions. If the latter can't be achieved, staff would recommend leaving the current language in place for now.

Hybrid Version

- Draft edits in hybrid model to include:
 - Eliminate timing provisions before and after split
 - Eliminate affidavit asserting family ties
 - Eliminate limitation on conveyance
 - Clarify access to properties using private road or easement

Comment: Staff again is seeking a balance of providing a clear path for creating a genuine family split but not allowing any other entity to use this provision for speculative land development.

Drawing Board

- None of the first three options of interest to the Legislative Committee
- Committee directs staff back to the drawing board for a new draft

Comment: If the existing language is not acceptable and the current draft proposal not seen as a good basis for shaping a family split provision, the Committee may wish staff to keep researching best practices for other ideas.



No.	Question/Comment/Request	Committee Member / Query Origin	Chapter / Section	Resolution/Solution/New Text
1	Residential Development Goals - Revisions to language- further discussion	JP Michelle Blaty	1	Addressed by removal of reference to market demand.
2	Burden of Proof - Item D reworded			Modified to place the burden on establishing non-conformity shared between applicant and County
3	Appeal process - Add that Appeals Board has all authority as Planning Board	JP Joel Jones	2, 2.8	Note that this has been added to Chapter 2 in Section 2.8. However, a new draft section for a proposed appeals board is recommended to supersede this.
4	Set up separate Ordinance to list Fee Schedules.			This has been completed as previously provided to Committee
5	Revisit inspections fees	JP Tom Allen		No agency contacted charges fees for follow up inspections for planning applications. However, the Benton County building officials do charge re-inspection fees. We will conduct further research on how we may best ensure that applicants follow through and meet conditions but at this time are ready to drop the re-inspection fee
6	Easement for splits 1-8 Item C- Areas of Jurisdiction	JP Joel Jones	1, 1.8(C)	
7	Enforcement- Section 2- Authority to access a property		2, 2.4(C)	Provided an extended Section 2.4(C) to clarify right-of-entry
8	Tie a Certificate of Occupancy (CO) to meeting conditions of approval		2, 2.4	A new subsection A has been added to Section 2.4 on p. 2-6
9	Add grandfathering term to Section 1.4(D)		1, 1.4(D)	<u>Added the following: "Effect of Ordinance on Existing Uses and Structures. An existing land use or structure is lawful only when it was legally established in compliance with all applicable regulations, and when it is operated and maintained in compliance with all applicable provisions of this Ordinance, including §2.7 (Nonconforming Uses) which establishes grandfathering provisions."</u>
10	Modify language of Section 1.4(E)		1, 1.4(E)	Modified by changing term nonconformities to nonconforming
11	Review Section 1.6(E)(2) for better language		1, 1.6(E)(2)	Please note the following modification to Section 1.6(E): A. Commercial and Industrial Development Goals 1. To discourage the indiscriminate mixing of commercial development into residential and